

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2909 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

R N DARJI

Versus

STATE OF GUJARAT

Appearance:

(MR PRADEEP P BHATT) for Petitioner
MR SG BHATT for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner who was at the time of filing this petition in June, 1988 working as Head Clerk in the Gram Vikas Agency, Gandhingar had challenged the order dated 4.6.1988 passed by the Addl. Development

Commissioner in Appeal Nos. 133/86 and 65/87 (Annexure "D" to the petition) and the petitioner had also prayed for a declaration that the petitioner is senior to respondent No. 3 (B.S. Patel) at Sr.No. 3 in the final seniority list dated 1.1.1984.

2. It appears that respondent No. 3 had filed a caveat and after hearing the learned counsel for the petitioner as well as the learned counsel for respondent No. 3, this Court admitted the petition on 15.6.1988 and passed the following interim order :-

"By way of interim relief, it is directed that the Respondents shall not revert the petitioner only on the basis of the impugned order at Annexure "D" from his present post of head clerk. It is clarified that this interim order will not affect any benefits flowing to Respondent No. 3 because of the impugned order."

3. It appears that the dispute raised in the petition was about seniority which was determined on the basis of the Government Notification dated 13.5.1977 under the Gujarat Panchayat Act, 1961 and the Rules framed thereunder. Pursuant to the said order, it cannot be said that the impugned order calls for any interference under Article 226 of the Constitution.

4. The petitioner was recruited as a computer which constitutes a different cadre and did not have any promotional avenue. On account of the representations made by or on behalf of the computers, the Government merged the cadre of computers with the clerical cadre so that all the persons coming into this cadre could be considered for promotion to the higher post of Senior Clerks and Head Clerks. This amalgamation was done with effect from 30.5.1977 and the computers who were recruited before 30.5.1977 were treated as having been appointed in the cadre of Senior Clerks with effect from 30.5.1977. Since the passing of departmental examination was necessary for the Senior Clerks for promotion from the post of Senior Clerk to higher post, obviously those who were appointed as computers and subsequently absorbed in the cadre of Senior Clerk with effect from 30.5.1977 were also required to pass the departmental examination for being considered for promotion to the higher post from the cadre of Senior Clerk. Thus, the view taken by the Addl. Development Commissioner in the impugned order cannot be said to be contrary to law or arbitrary and, therefore, the impugned order does not call for any interference by this Court under Article 226 of the

Constitution. However, while vacating the interim relief which was granted earlier in favour of the petitioner as far back as in June, 1988, it appears to the Court that it would be just and proper to direct respondent Nos. 1 and 2 that in case respondent Nos. 1 and 2 are inclined to pass any order adverse to the petitioner, such an order shall not be implemented for a period of one month from the date of communication of the order to the petitioner.

5. Subject to the aforesaid direction, the petition is dismissed. Rule is discharged. There shall be no order as to costs. The interim relief granted earlier is also vacated subject to the aforesaid direction.

February 18, 2000 (M.S. Shah, J.)
sundar/-